

**OPINION
63-128**

June 13, 1963 (OPINION)

ELECTIONS

RE: Special Election - Procedure

Your letter of June 12, 1963, provides as follows:

his office has just been notified that the petitions referring the following measures enacted by the Thirty-eighth Legislative Assembly have been accepted, filed and found sufficient by the Secretary of State:

S.B. 39 - withholding tax

S.B. 50 - adjusted tax on individual income

S.B. 360 - graduated income tax

H.B. 750 - tax levy limitation in school districts

H.B. 771 - tax levy for new urban renewal projects

Request is hereby made for an Opinion from your office on the following:

1. Please advise the last day for holding a special election making it possible to submit all five measures to a vote of the people at the same time, assuming that the governor issues a proclamation on June 13, 1963, calling for a special election.
2. Whether or not it will be possible to have a special election to fill a legislative vacancy in Eddy and Foster Counties on the same day as the state-wide special election stated above.
3. Since the petitions have now been found to be sufficient, would you outline a timetable and steps and procedure to be followed in setting up a special election after the governor issues the proclamation, assuming that the governor does so on June 13, 1963. Article 2 of Section 25 of the Constitution will be controlling in this respect; however, would you also indicate whenever the statutes relating to special elections are followed in outlining the steps above."

It appears that paragraph 6 of Section 25 of the North Dakota Constitution is the reason you ask what would be the last permissible day to hold a special election on all five measures. One of these five measures is an emergency measure. A part of paragraph 6 of this section of the Constitution in regard to emergency measures provides

as follows:

* * * Any such measure shall be submitted to the electors at a special election if so ordered by the Governor, or if the referendum petition filed against it shall be signed by thirty thousand electors at large. Such special election shall be called by the Governor, and shall be held not less than one hundred nor more than one hundred thirty days after the adjournment of the session of the legislature." (Emphasis supplied.)

It would appear that the underlined words refer to either the case where the Governor called a special election on an emergency measure that does not have thirty thousand signatures and also where such a measure does have thirty thousand signatures. It is our opinion that the one hundred thirty days limitation applies only to the situation where an emergency measure has been referred by thirty thousand electors. It is easy to see why the Governor can be forced to have a speedy determination on an existing law (emergency measure) when a referendum petition has been signed by thirty thousand electors, but there is no reason to assume that an emergency measure signed by seven thousand persons should need to be treated any differently than an ordinary referred measure. Consequently, this provision need not affect your determination on the date for holding such election.

In regard to your second question, we enclose a copy of a letter dated June 12, 1963, addressed to Mr. Fabian Noack, Foster County State's Attorney, which answers this question in the affirmative.

In answer to your third question, Section 16-01-07 provides as follows:

CONSTITUTIONAL AMENDMENTS TO BE ADVERTISED. Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote, the secretary of state shall, not less than thirty days before election, certify the same to the auditor of each county in the state, and the auditor of each county shall cause notice thereof to be included in the notice required by law for the election. Questions to be submitted to the people of the county shall be advertised in the same manner."

If you wish to hold the election at the earliest possible date, the secretary of state should, immediately upon your issuing a proclamation of election, certify to the county auditors the questions to be submitted to the people.

Section 25 of the Constitution also requires that the secretary of state shall cause to be printed and mailed to each elector, a publicity pamphlet containing a copy of each measure, together with its ballot title, to be submitted at any election. There is no specific timetable set out in the law for handling of the publicity pamphlet. The secretary of state informs us that he is already taking steps to make certain the publicity pamphlet will be mailed to the electors at an early date. He has already announced to the public that they have the opportunity to put information in this pamphlet concerning any measures therein upon first subscribing their

names and addresses thereto and paying a fee of the sum of \$200.00 per page. He has also presented a list of the electors to the printer so he may begin mailing as soon as the pamphlets are printed. It would appear that the publicity pamphlet will be received by the electors before the thirty days set out in Section 16-01-07 have expired.

Consequently, if the proclamation setting forth the special election is issued on the date mentioned in your letter, i.e., June 13, 1963, the election could be held at the earliest on July 15th, 1963. If this were the date chosen, it would be necessary for the secretary of state to certify the ballot questions to the county auditor no later than June 14, 1963. Also, if there was to be an election in the Eddy-Foster County legislative district, it would be necessary to give public notice of the party convention in that district to select a candidate no later than June 14, 1963. This would allow them to schedule the convention on June 20, 1963, because there must be six days' notice before the convention is held, according to Section 16-07-03 of the North Dakota Century Code. If the party convention to select legislative candidates for that district were held on the twentieth, it would also be necessary for the secretary or president of such convention by registered or certified mail, or in person, to file such certificate of nomination with the secretary of state on the same day as such certificates must be filed with the secretary of state not later than five o'clock P.M. on the twenty-fifth day before the election. You can see that if the election were to be held on July fifteenth, you would be on a very tight time schedule.

HELGI JOHANNESON

Attorney General